



BALCH & BINGHAM LLP

Alabama • Mississippi • Washington, DC

Paul A. Clark
(334) 269-3141

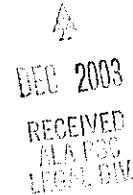


Attorneys and Counselors
The Winter Building
2 Dexter Avenue
P.O. Box 78 (36101-0078)
Montgomery, Alabama 36104-3515
(334) 834-6500
(334) 269-3115 Fax
www.balch.com
(866) 736-3856 (direct fax)
pclark@balch.com

December 2, 2003

BY HAND DELIVERY

Mr. Walter Thomas
Secretary
Alabama Public Service Commission
RSA Union Building
8th Floor
100 N. Union Street
Montgomery, Alabama 36104



Re: Petition For A Declaratory Order Regarding Classification of IP Telephony
Service; Docket No. 29016

Dear Mr. Thomas:

Enclosed for filing are the original and ten copies of Reply Comments of AT&T in the
above-referenced matter.

Sincerely,


Paul A. Clark

PAC:dpe
Enclosures

**BEFORE THE
ALABAMA PUBLIC SERVICE COMMISSION**

IN RE:

Petition For A Declaratory Order)	
Regarding Classification Of IP)	DOCKET NO. 29016
Telephony Service)	

REPLY COMMENTS OF AT&T

I. INTRODUCTION

The Alabama Public Service Commission (the "APSC" or "Commission") should refrain from exercising any jurisdiction it may have regarding voice over internet protocol ("VoIP") services until the Federal Communications Commission has had an opportunity to address these issues in a broader context at the federal level. This is the general view of the parties filing initial comments in this proceeding and is the correct conclusion for the APSC make at this time. As expected, only the petitioning Local Rural Exchange Carriers (the ILECs) and, to a very limited extent, BellSouth continue to argue for application of access charges to VoIP services. Indeed, BellSouth states in its initial comments that

BellSouth believes that it would be a mistake at this early stage in the development of VoIP technologies and services for this Commission and other state commissions to undertake what would amount to duplicative state proceedings that could, in turn, result in a patchwork of inconsistent state rules that interfere with the rapid evolution of these promising new consumer services and the development of an appropriate national regulatory framework for dealing with them.¹

¹ *Comments of BellSouth Telecommunications, Inc.*, p. 4.

Notwithstanding its belief that it would be a mistake for the Commission to undertake duplicative proceedings, BellSouth urges this Commission to make a limited ruling regarding AT&T's Petition that is currently pending before the FCC² and thereby potentially create the "patchwork of inconsistent state rules" that it believes should be avoided. The APSC should not take any action on matters that are pending before the FCC and should, as most parties (including BellSouth) urge, refrain from imposing any regulatory regime over VoIP services at this time. To do otherwise would be inappropriate and untimely given the FCC's recent actions regarding its intent to address VoIP issues on a national level.

Six days after the filing of initial comments in this proceeding, the FCC issued a News Release announcing that it would hold a forum on VoIP issues on December 1, 2003. "Chairman Powell also announced that, shortly after the forum, the Commission will initiate a Notice of Public Rule Making (NPRM) to inquire about the migration of voice services to IP-based networks and gather public comment on the appropriate regulatory environment for these services."³ Consequently, this Commission should work through the FCC's NPRM along with other state and federal agencies to help establish a uniform national framework for the treatment of VoIP services rather than embarking upon its own independent investigation for Alabama.

II. Emerging VoIP Services Should Be Governed By A Uniform National Policy.

VoIP and related developments demand the most careful consideration. This extraordinarily promising, technology can be seen in its incipient stages as interexchange

² *In the Matter of Petition For Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services Are Exempt From Access Charges*, WC Docket No. 02-361 (filed October 18, 2002)

³ FCC New Release, November 6, 2003.

carriers convert their circuit-switched infrastructures to unitary IP networks able to receive communications in any form and from any device and seamlessly transport it across Internet backbone facilities that span the globe to connect with any other device anywhere; as equipment manufacturers offer individual business users opportunities to employ VoIP in their intracompany communications; and as cable and other providers utilize VoIP capabilities in conjunction with broadband Internet access to offer VoIP services to residential customers

No one disputes that VoIP can bring enormous consumer benefits in the form of innovative new services that are capable of delivering not only high quality “voice,” but a host of other next-generation features as well. VoIP has the *potential* to revolutionize communications and to speed the delivery of advanced services to all Americans, *see* 47 U.S.C. §§ 157 note, 230(b). Indeed, VoIP may prove to be the long-sought application for broadband that will drive the reach and speed of Internet access to levels sought by visionary calls to accelerate the digital migration. And the very breadth and flexibility of existing and future VoIP technologies creates opportunities both for the full range of traditional providers of communications services and for decidedly non-traditional providers.

Despite the great promise of VoIP, concerns have been raised about the effect of VoIP on existing ILEC revenue streams – particularly access charges – in Alabama. Predictably, these claims have been raised by ILECs who seek to continue to enjoy subsidies from their competitors in the form of bloated access charges. The Commission should address the issue of intrastate switched access charges head-on in a proceeding designed to implement the comprehensive changes in intercarrier compensation that has

too long been neglected. An ideal docket to examine these issues is Docket No. 28590, *Proposed Revisions to the Price Regulation and Local Competition Plan*. To fail to do so, and instead distort the evolution of VoIP, would terribly disserve the citizens of Alabama.

That is because wide-scale deployment and acceptance of VoIP services will require innovation and investment on a massive scale – not only in new software and customer premises equipment solutions, but in upgrading backbone networks and adapting network facilities to support the advanced IP-based platforms necessary to provide consumers with true enterprise-class service quality. Although no one can predict today which particular VoIP technologies, service providers or business models will ultimately prove the most efficient and responsive to consumer demand, there is every reason to believe that – with the right regulatory environment – the best solutions will emerge and VoIP will live up to its full promise. It has become equally clear, however, that mindless application of switched access charges to VoIP services poses a grave threat to efficient evolution of VoIP.

The FCC again appears poised to assume a leadership role, recognizing that the regulatory issues surrounding VoIP are so interrelated and of such importance that they can only be addressed sensibly in a broad federal proceeding to “comprehensively tackle the proper regulatory treatment of VoIP and related issues.”⁴ As Chairman Powell has stressed, this forthcoming comprehensive review must take place on “the cleanest slate possible.”⁵ Only through contemporaneous and thoughtful application of the full range of issues can we retain the flexibility to reach correct and sustainable decisions that will

⁴ Letter from Chairman Michael K. Powell to Sen. Ron Wyden, at 1-2 (Nov. 5, 2003) (“*Powell VoIP Letter*”).

⁵ *Id*

promote, rather than impede, VoIP deployment. And only by developing consistent policies that account for and apply equally to VoIP in all of its present and future incarnations can we avoid the most costly error of all – picking winners and losers by government fiat, rather than through competition and consumer choice.

III. BellSouth's Proposal For Piecemeal Regulation of VoIP Services Is Ill-advised And Without Merit.

Although most commenters support an all-inclusive rulemaking proceeding at the FCC and recognize the dangers of piecemeal adjudication, BellSouth, urges a course that would all but guarantee the very mistakes that it counsels the APSC to avoid. While paying lip service to the need for the FCC to undertake a comprehensive resolution of VoIP, BellSouth would have this state Commission undermine that initiative by prejudging important issues and “summarily denying” AT&T’s VoIP Petition at the FCC in WC Docket No. 02-361. If there is going to be a comprehensive review of VoIP issues, as the FCC has announced there will be, then it should include all issues including those in AT&T’s pending Petition without prejudgment by individual state commissions.

Ruling that AT&T’s VoIP service is subject to access charges would directly or by necessary implication limit the APSC’s discretion to address broader and related VoIP issues in the FCC’s forthcoming rulemaking proceeding. For example, if the Commission accepted BellSouth’s argument that AT&T’s VoIP service is a telecommunications service and that all telecommunications services *necessarily* must be subject to access charges, it would have dramatically limited its consideration of the appropriate treatment of other VoIP services, limited its ability to impose innovative or responsive regulatory requirements short of the traditional exchange access regime to

those services, and impeded its ability to determine what incentives are necessary to ensure the full development of Internet-based services. These are all matters that will be considered by the FCC in its upcoming NPRM.

Nonetheless, BellSouth asks this Commission to engage in piecemeal decision-making. Prejudging issues pending before the FCC and constraining the Commission's discretion are, of course, exactly what BellSouth seeks to gain by proposing summary disposition of AT&T's VoIP Petition. By walling off from any "comprehensive" rulemaking important issues related to VoIP services, BellSouth would not only immediately lock in place important elements of existing access charge regimes, but would also markedly tilt the playing field for the Commission's subsequent deliberations regarding "the appropriate regulatory environment for VoIP services."⁶ There is simply no reason for the Commission to make its task of determining the appropriate regulatory regime for VoIP more difficult by estopping itself through summary action on a matter that is pending before the FCC.

Providing alternatives to circuit-switched communications is an essential step in the evolution of IP networks, and AT&T's current VoIP services are no different in this respect than current-generation VoIP services, like those offered by Vonage, which are beginning, in some very limited circumstances, to give some consumers some choice for voice communications. Moreover, even if VoIP could only give consumers an alternative for voice communications, that alone would be a powerful reason *not* to impose non-cost-based charges and other legacy regulation that can only impede VoIP-based competition. In all events, VoIP services have the potential to offer not just voice, but an array of

⁶ *Powell VoIP Letter* at 2.

sophisticated and customized communications management features that are not available with traditional voice services.

There is no basis under currently effective rules for imposing access charges on phone-to-phone offerings, as BellSouth contends. In the *Universal Service Report*⁷, the FCC tentatively concluded that computer-to-computer and computer-to-phone services are enhanced or information services, and that certain phone-to-phone IP telephony services appeared to be telecommunications services. But it refused to make “any definitive pronouncements” and “defer[red] a more definitive resolution of these issues” to a future rulemaking or other proceeding that would comprehensively address these services and determine if this tentative distinction “accurately distinguishes between phone-to-phone and other forms of IP telephony, and is not likely to be quickly overcome by changes in technology.”⁸ The FCC stated that the future proceeding would address the “regulatory requirements to which phone-to-phone providers may be subject if we were to conclude that they are ‘telecommunications carriers’” because they provide “telecommunications services.”

With regard to access charges, the FCC stated that even if it were to conclude that “certain forms of phone-to-phone IP telephony service are ‘telecommunications services’”, and “obtain the same circuit-switched access as obtained by other interexchange carriers,” the services would not be subject to the same access charges as apply to circuit switched calls – *i.e.*, the carrier’s carrier charges imposed by FCC Rule 69.5. Rather, in that event, the FCC “*may* find it reasonable that they pay similar access

⁷ *Federal-State Joint Board on Universal Service*, Report to Congress, 13 FCC Rcd. 11,501, ¶¶ 13-15, 1998.

⁸ *Universal Service Report* ¶¶ 90-91.

charges.”⁹ Conversely, the FCC noted that, because of the costs of determining whether particular phone-to-phone VoIP services were subject to particular per minute access charges, the FCC would then “face difficult and contested issues” and may decline to require even “similar access charges.”¹⁰ The *Universal Service Report* thus treats all phone-to-phone IP-based telephony services as exempt from the carrier’s carrier charges imposed by Rule 69.5 – and only *potentially* subject to “similar access charges” that the FCC *might* impose in a future rulemaking.

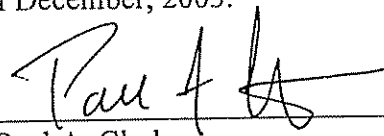
CONCLUSION

The comments in this proceeding leave no doubt that all IP-based communications services, including AT&T’s, are integral parts of the development of next-generation Internet-based services that lie at the heart of, and cannot be separated from, any comprehensive examination of VoIP services and their regulation. Any “comprehensive” consideration of VoIP related issues would necessarily have to address the interrelated aspects of this “new world” created by IP-based network capabilities. For the foregoing reasons and those presented by the overwhelming majority of commenters in this proceeding, the Commission should refrain from exercising any jurisdiction that it determines it may have over VoIP services until after the FCC has completed its comprehensive review of these matters, including the issues raised by AT&T’s Petition in WC Docket No. 02-361.

⁹ *Universal Service Report* ¶ 91..

¹⁰ *Id* ¶ 91 (emphases added).

Respectfully submitted this 2nd day of December, 2003.

A handwritten signature in black ink, appearing to read "Paul A. Clark", written over a horizontal line.

Paul A. Clark

One of the attorneys for AT&T Communications of
the South Central States, LLC

OF COUNSEL:

Paul A. Clark (CLA076)

Robin G. Laurie (LAU006)

BALCH & BINGHAM LLP

Post Office Box 78

Montgomery, AL 36101-0078

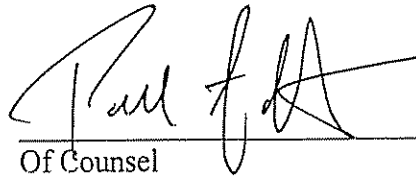
Telephone: (334) 834-6500

Facsimile: (334) 269-3115

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served upon the following by U.S.
Mail, properly addressed and postage prepaid, on this the 2nd day of December, 2003:

Francis B. Semmes, Esq.
BellSouth
3196 Highway 280 South
Room 304N
Birmingham, Alabama 35243



Of Counsel